

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH

LA SPECIALTY PRODUCE COMPANY

and

Case 32–CA–207919

TEAMSTERS LOCAL 70, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

*Noah J. Garber, Esq.*, for the General Counsel.

*James A. Bowles, Esq.*, for the Respondent.

*Andrew H. Baker, Esq.*, for the Charging Party.

DECISION

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case was tried in Oakland, California, on March 26, 2018. The General Counsel alleges, in the January 31, 2018 complaint, based on an October 13, 2017 charge filed by Teamsters Local 70, International Brotherhood of Teamsters (Charging Party or Union), that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by unlawfully maintaining two rules in its employee manual: the “Confidentiality & Non-Disclosure” rule and the “Media Contact” rule.<sup>1</sup> Respondent filed a timely answer.

For the reasons that follow, I find that Respondent violated Section 8(a)(1) of the Act with regard to both rules.

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<sup>1</sup> On March 5, 2018, the Regional Director for Region 32 of the National Labor Relations Board (Board) issued an order approving a partial withdrawal request which partially withdrew complaint allegations.

On the entire record,<sup>2</sup> including my observation of the demeanor of the witnesses,<sup>3</sup> and after considering the briefs filed by the General Counsel, Charging Party, and Respondent,<sup>4</sup> I make the following

## FINDINGS OF FACT AND ANALYSIS

### I. JURISDICTION

Respondent, a State of California corporation with an office and place of business in Hayward, California (facility), is engaged in the nonretail sale and distribution of produce, where it annually sold and shipped from its facility goods valued in excess of \$50,000 directly to points outside the State of California. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Based on the above, I find that these allegations affect commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

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<sup>2</sup> Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations but rather on my review and consideration of the entire record for this case. In addition, the transcript in this case is generally accurate, but I make the following corrections to the record: Transcript (Tr.) 5, Line (L.) 3: “preliminary” should be “formal”; and Tr. 5, L. 7: “Baman” should be included as the middle name.

<sup>3</sup> I further note that my findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom. A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness’ testimony. *Daikichi Sushi*, 335 NLRB at 622. In this matter, there are no significant credibility disputes.

<sup>4</sup> Other abbreviations used in this decision are as follows: “GC Exh.” for General Counsel’s exhibit; “GC Br.” for the General Counsel’s brief; “CP Br.” for the Charging Party’s brief; and “R. Br.” for Respondent’s brief. After the filing of briefs, Respondent, on June 12, 2018, filed a notice of recent supplemental authority in which Respondent cites to General Counsel memorandum 18–04, dated June 6, 2018. The Charging Party “opposes” the notice. General Counsel memorandums are simply guidance for Regional Offices, and have no binding legal precedent on administrative law judges who are bound by Board precedent that neither the Board nor the Supreme Court has reversed. See *George Joseph Orchard Siding, Inc.*, 325 NLRB 252, 255 (1998) (“the General Counsel’s memoranda, or indeed other communications or positions of the General Counsel, like the positions of the counsel for the General Counsel made at trial, are but the position of a party to the complaint litigation. As such the General Counsel’s positions—as opposed to joint General Counsel-Board determinations or provisions—are not binding on the Board or its judges and are effective only to the extent they are persuasive”); see also *Western Cab Co.*, 365 NLRB No. 78, slip op. at 1 fn. 4 (2017). In that regard, since the Board’s decision in *The Boeing Co.*, 365 NLRB No. 154 (2017), the Board had issued no further decisions in these rules-type cases.

## II. THE ALLEGED UNLAWFUL RULES

*A. Respondent's Organization and the LA & SF Specialty Employee Manual*

Respondent is a wholesale distributor of produce and other fine foods and specialty foods to white tablecloth restaurants, hotels, and specialty grocers (Tr. 25). Respondent's corporate office is in Santa Fe Springs, California, and it has facilities in Northern and Southern California including Hayward, California, as well as in Arizona and Nevada (Tr. 26). Michael Glick (Glick) is Respondent's owner (Tr. 26).

Wesley Wong (Wong), who is Respondent's director of human resources and customer service, testified that since at least 1998 Respondent has maintained the LA & SF Specialty Employee Manual (the Manual) which contains the two rules at issue (Tr. 25, 27). Wong admitted that he was not involved in the drafting of these rules but discussed them with Glick and other members of management (Tr. 26–27, 34).

*B. "Confidentiality & Non-Disclosure" Rule*

As alleged in the complaint, since at least April 13, 2017, Respondent has maintained a confidentiality and non-disclosure rule in the Manual. The "Confidentiality & Non-Disclosure" rule states, in entirety,

**Every employee is responsible for protecting any and all information that is used, acquired or added to regarding matters that are confidential and proprietary of [Respondent] including but not limited to client/vendor lists, client/vendor information, accounting records, work product, production processes, business operations, computer software, computer technology, marketing and development operation, to name a few. Confidential information will also include information provided by a third party and governed by a non-disclosure agreement between [Respondent] and the third party. Access to confidential information should be disclosed on a "need-to-know" basis and must be authorized by management. Any breach to this policy will not be tolerated and will be subject to disciplinary and legal action.**

(Emphasis added) (GC Exh. 2). The complaint only alleges that the portion in bold violates the Act.<sup>5</sup>

Wong described that Respondent's customer lists, on a computer system, includes addresses, contact information, ordering preferences, pricing and customer discounts (Tr. 28, 36). Wong stated also that the customer lists may be manipulated to omit any information not needed such as pricing (Tr. 36). Wong testified that Respondent seeks to keep the customer lists

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<sup>5</sup> The Charging Party raises an additional argument that other portions of the Confidentiality & Non-Disclosure rule also violate the Act (Tr. 41; CP Br. at 6). However, the General Counsel has the sole authority to issue the complaint and any amendments. The General Counsel specifically limited its complaint allegation to the section bolded, and thus, this decision will only focus on that portion of the rule when determining whether that section of the rule is unlawful.

confidential because, “Those are our trade secrets. If those get out to our competitors, it’s an extremely competitive business. They can use that against us, especially with outbidding us with the pricing. They can lowball us. They can once they know what the customer orders, they can approach those customers and attack us, and outbid us.” (Tr. 29).<sup>6</sup> The vendor list is similar to the customer list but with vendor names and similar information including pricing (Tr. 29). Again, Wong testified that Respondent seeks to keep the vendor list confidential because, “We can get outbid with pricing. They can undermine us and secure these vendors that we worked hard to establish relations through the years.” (Tr. 29).

Wong testified that Respondent considers customer names and locations to be confidential but confusingly, also stated on cross-examination that employees could share customer names with a union because “Employees have the right to say what they want [ . . . ] or talk to who they want” (Tr. 37, 40–41, 44–45). Moreover, when asked about the difference between customer/vendor lists and customer/vendor information, as indicated as confidential and proprietary in the rule, Wong stated, “Well, lists is what we specified before, where you go on a computer and printout a whole list. Information can be anything” including information already provided on the list (Tr. 41). Wong offered that if any employee is unclear about the rule, the employee may ask him to clarify (Tr. 44).

Respondent provided no evidence of economic harm aside from Wong’s conjecture (Tr. 35). Moreover, Wong testified that no employee has been disciplined for violating the “Confidentiality & Non-Disclosure” rule (Tr. 31, 34–35).

Union Trustee Richard Fierro (Fierro) testified that the Union is currently organizing the employees at Respondent’s facility (Tr. 17–18). Fierro testified that for organizing purposes the names of clients or vendors from employees to the Union is important so as to bring awareness to these third parties of the working conditions of a business’ employees (Tr. 18–19). Fierro admitted that customer identities could be obtained through employees but the employees do not know the identities of all the customers (Tr. 21–23).

### C. “Media Contact” Rule

As alleged in the complaint, since at least April 13, 2017, Respondent has maintained a media contact rule in the Manual. The “Media Contact” rule states, “Employees approached for interview and/or comments by the news media, cannot provide them with any information. Our President, Michael Glick, is the only person authorized and designated to comment on Company policies or any event that may affect our organization” (GC Exh. 2).

Wong testified that Respondent’s reason for the Media Contact rule was to ensure that Glick was the only person authorized and designated to speak on behalf of Respondent as he did not want “false information” going out (Tr. 31). Wong admitted that Respondent has never suffered economic harm by an employee speaking to the media and no employee has been disciplined for violating the “Media Contact” rule (Tr. 32, 34–35). However, Wong stated that if

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<sup>6</sup> Wong was asked a couple of questions regarding the California Trade Secrets Act and the necessity of confidentiality policies due to trade secrets (Tr. 33–34). Wong stated in response, “I’m not clear on that, but I will say yes” (Tr. 34).

an employee were to speak to the media on his own behalf, he would not be violating the policy as an employee has the right to speak to the media when he wants (Tr. 31–32, 45).

Fierro testified that when the Union organizes employees, it will ask employees to speak to the media to strengthen support for unionization, to discuss their working conditions, and to pressure a business to improve working conditions for employees (Tr. 18, 20). These employees speak on their own behalf, and not on behalf of a business (Tr. 21).

### III. CONTENTIONS OF THE PARTIES

The General Counsel alleges that Respondent’s “Confidentiality & Non-Disclosure” rule and “Media Contact” rule in the Manual violate Section 8(a)(1) of the Act. Specifically, the General Counsel alleges that these rules are category 3 rules under the Board’s decision in *The Boeing Co.*, 365 NLRB No. 154 (2017), and therefore, unlawful. Furthermore, the General Counsel argues that Respondent’s business justifications do not outweigh the adverse impact on employees’ Section 7 rights (GC Br. at 7–13). The Charging Party sets forth similar arguments as the General Counsel (CP Br. at 6–8).

Respondent admits that it has maintained these two rules in the Manual since at least April 13, 2017. However, Respondent denies that these rules violate the Act as the rules were promulgated for legitimate and lawful business reasons such as to protect proprietary trade secrets which outweigh any potential impact on employees’ Section 7 rights (R. Br. at 8-19).

### IV. ANALYSIS OF UNFAIR LABOR PRACTICE

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 [of the Act].” Section 7 provides that “employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.” Specifically, Section 7 protects employees’ right to discuss, debate, and communicate with each other regarding workplace terms and conditions of employment.

Under Board law, a work rule is unlawful if “the rule *explicitly* restricts activities protected by Section 7.” *Lutheran Heritage*, supra at 646 (emphasis in original). Moreover, if a work rule does not explicitly restrict protected activities, it nonetheless may violate Section 8(a)(1) if “(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.” *Id.* at 647. However, in *Boeing Co.*, supra, the Board overruled the “reasonably construe” standard in prong 1 of *Lutheran Heritage* and replaced it with a new standard. The Board stated, “When evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, *and* (ii) legitimate justifications associated with the rule.” *Id.*, slip op. at 3 (emphasis in original). The Board continued, “the Board will conduct this evaluation, consistent with the Board’s ‘duty to strike the *proper balance* between . . . asserted

business justifications and the invasion of employee rights in light of the Act and its policy’, focusing on the perspective of employees, which is consistent with Section 8(a)(1).” *Id.* (emphasis in original, footnotes omitted).

Furthermore, the Board, as a result of this balancing, created three categories of employment policies, rules and handbook provisions:

- *Category 1* will include rules that the Board designates as lawful to maintain, either because (i) the rule, when reasonably interpreted, does not prohibit or interfere with the exercise of NLRA rights; or (ii) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. Examples of Category 1 rules are the no-camera requirement in this case, the “harmonious interactions and relationships” rule that was at issue in *Williams Beaumont Hospital*, and other rules requiring employees to abide basic standards of civility.
- *Category 2* will include rules that warrant individual scrutiny in each case as to whether the rule would prohibit or interfere with NLRA rights, and if so, whether any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications.
- *Category 3* will include rules that the Board will designate as unlawful to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule. An example of a Category 3 rule would be a rule that prohibits employees from discussing wages or benefits with one another.

*Id.*, slip op. at 3–4, 15 (citing *Williams Beaumont Hospital*, 363 NLRB No. 162 (2016)). These categories are not part of the balancing test but rather categorical assignment of a rule by the Board after the decision is made.<sup>7</sup> *Id.*

#### A. “Confidentiality & Non-Disclosure” Rule

To recap, Respondent’s “Confidentiality & Non-Disclosure” rule, since at least April 13, 2017, states:

Every employee is responsible for protecting any and all information that is used, acquired or added to regarding matters that are confidential and proprietary of [Respondent] including but not limited to client/vendor lists, client/vendor information, accounting records, work product, production processes, business operations, computer software, computer technology, marketing and development operation, to name a few. Confidential information will also include information provided by a third party and governed by a non-disclosure agreement between

<sup>7</sup> In this decision, I will not classify these rules per the categories set forth in *Boeing*. The Board stated, “The Board will determine, in future cases, what types of additional rules fall into which category.” *Boeing*, supra at slip op. at 4. Thus, until the Board makes specific determinations on which categories the “Confidentiality & Non-Disclosure” and “Media Contact” rules belong, it is not within my purview to assign as such.

[Respondent] and the third party. Access to confidential information should be disclosed on a “need-to-know” basis and must be authorized by management. Any breach to this policy will not be tolerated and will be subject to disciplinary and legal action.

The complaint only alleged the language in bold as a violation of the Act but to ensure completeness, a reading of the entire rule is appropriate. As the “Confidentiality & Non-Disclosure” rule does not explicitly restrict Section 7 activity, and there is no allegation that this rule was promulgated in response to union activity or been applied to restrict Section 7 activity, prong 1 of *Lutheran Heritage* is implicated. As explained above, the “reasonably construed” standard in *Lutheran Heritage* has been replaced with the *Boeing* balancing test (balancing the legitimate interests served by a facially neutral rule with the potential chilling effect of the rule on the exercise of Sec. 7 rights). Both the General Counsel and Respondent presented witnesses who testified uncontradicted about the impact of the rule on the employees and employer.

Turning to the balancing test, Respondent’s asserted legitimate business justification, as explained by Wong, is that due to the nature of Respondent’s competitive business, Respondent needs to keep its proprietary information of pricing and discounts offered to customers and vendors confidential. Respondent certainly has a substantial justification in protecting its pricing and discounts from competitors. However, the rule as stated does not purport to protect Respondent’s proprietary information of pricing and discounts. To be clear, the General Counsel only alleged a very narrow portion of this rule to be unlawful. The rule states, in part, that employees must not divulge customer and vendor lists. Unfortunately, the record lacks any evidence as to whether it is well-known to employees what customer and vendor lists are as defined by Respondent. Customer and vendor lists as read in the rule may be read to be simply a list of customers and vendors, and not as described by Wong. To add to this confusion, Wong testified that while customer names and locations are confidential, employees may share this information with a union. But, the rule also states that customer information is confidential and proprietary. The lack of clarity as to what is permitted to be shared by employees is clear when examining the plain language of the rule and the testimony of Wong. Finally, Respondent claims that the California Uniform Trade Secrets Act “requires” this rule (R Br. at 7, 11–16). I cannot accept this business justification claim as Wong clearly did not know whether Respondent was required to maintain such a rule (see Tr. 33–34). Even assuming that Respondent’s arguments are valid, the confusion in what employees may not share regarding customers and vendors undermines Respondent’s asserted legitimate business justification.

On the other hand, the potential impact on employees’ Section 7 rights tips the scale in favor of employee rights. Respondent’s “Confidentiality & Non-Disclosure” rule prohibits employees from sharing customer and vendor names with third parties such as a labor organization. Also generally, employees have a Section 7 right to appeal to an employer’s customers and vendors for support in a labor dispute and do not constitute “a disparagement or vilification of the employer’s product or reputation.” *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990) (*Allied Aviation Service Co. of New Jersey*, 248 NLRB 229, 230 (1980), enf’d. 636 F.2d 1210 (3d Cir. 1980)). Again, Respondent’s “Confidentiality & Non-Disclosure” rule fails to elucidate for employees what may be shared with third parties. Cf. *Macy’s, Inc.*, 365 NLRB No. 116 (2017) (rule lawful which prohibited use of customer information, defining customer information and prohibiting use or disclosure of customers’ social security numbers and credit

card numbers). Thus, Respondent's "Confidentiality & Non-Disclosure" rule business justification does not outweigh the employees' Section 7 rights.

Respondent argues that no evidence was presented to demonstrate that the rule "actually interfered" with employees' Section 7 rights which essentially demonstrates that employees understand Respondent's intention for the rule (R. Br. at 10). However, this argument is unavailing. Inasmuch there is no evidence regarding interference of Section 7 rights, Respondent also provided no evidence that it suffered from any economic harm as a result of employees' violating the rule; in fact, according to Wong, employees could divulge lists of customers to third parties when conducting Section 7 activity and employees would not be violating the rule. However, as read, said employee conduct would be violating the rule. Therein lies the problem with the rule. The rule, as written, with specific reference to "customer/vendor lists" is vague and ambiguous, and the *Boeing* balancing test tips in favor of employees' Section 7 rights. Accordingly, the rule violates Section 8(a)(1) of the Act.

#### B. "Media Contact" Rule

Respondent's Media Contact rule, since at least April 13, 2017, states, "Employees approached for interview and/or comments by the news media, cannot provide them with any information. Our president, Michael Glick, is the only person authorized and designated to comment on company policies or any event that may affect our organization." Again, the General Counsel has not alleged that Respondent's Media Contact rule does not explicitly restrict Section 7 activity, and there is no allegation that this rule was promulgated in response to union activity or been applied to restrict Section 7 activity, prong 1 of *Lutheran Heritage*, and the *Boeing* balancing test are implicated.

Respondent argues that it has a legitimate business interest to permit only its president to speak on its behalf. Respondent argues that the phrase "on its behalf" should make clear to any employee that while they may speak to the media on any subject, they may not on its behalf (R. Br. at 16). Again, while that argument may be true, the rule as read precludes employees from speaking to the media on any subjects regarding Respondent. While it is certainly a legitimate business reason for Respondent to designate whom it wants to speak on its behalf, employees' Section 7 rights certainly tip the scales in their favor. For example, Section 7 of the Act permits employees to speak to the public including the media regarding labor disputes. See *Valley Hospital Medical Center, Inc.*, 351 NLRB 1250, 1252 (2007), *enfd. sub nom. Nevada Service Employees Local 1107 v. NLRB*, 358 Fed.Appx. 783 (9th Cir. 2009).

Respondent concedes that Section 7 rights include employees' right to speak with the media about working conditions and other terms and conditions of employment (R. Br. at 16, 18). See *Trump Marina Casino Resort*, 355 NLRB 585 (2010) (rule allowing only company executives to speak with the media was overbroad and without legitimate business justification thereby violating Sec. 8(a)(1) of the Act); *Crown Plaza Hotel*, 352 NLRB 382, 385–386 (2008). The Media Contact rule as written does not clarify that employees may speak to the media on their own behalf but clearly states that employees may not speak to the media about Respondent when approached. The second sentence of the Media Contact rule does not make clear to employees that they can speak to the media on their own behalf. Instead, the second sentence indicates to employees that they may not speak to the media about Respondent's policies which

could also concern working conditions and other terms and conditions of employment which impacts their Section 7 rights. The Media Contact rule as written creates a chilling effect on employees when exercising Section 7 rights. Moreover, the Board in *Boeing* noted that the Board will balance an employer's legitimate interests served by a facially neutral policy with the potential chilling effect of the rule on the exercise of Section 7 rights. *Boeing*, supra at slip op. 10 fn. 47. Thus, the General Counsel need not prove actual harm to employees as argued by Respondent (R. Br. at 17).

In sum, Respondent's "Media Contact" rule is unlawful, and violates Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent maintained the following rules in its LA & SF Specialty Employee Manual since at least April 13, 2017, that are facially unlawful, which could be understood to prohibit employees from engaging in activities protected under Section 7 of the Act, and therefore, violate Section 8(a)(1).

i. In the Confidentiality & Non-Disclosure rule:

Every employee is responsible for protecting any and all information that is used, acquired or added to regarding matters that are confidential and proprietary of [Respondent] including but not limited to client/vendor lists,

ii. In the Media Contact rule:

Employees approached for interview and/or comments by the news media, cannot provide them with any information. Our President, Michael Glick, is the only person authorized and designated to comment on Company policies or any event that may affect our organization.

3. The above unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. To remedy Respondent's violations of Section 8(a)(1) of the Act, I shall recommend that Respondent post and abide by the attached notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>8</sup>

# ORDER

Respondent, LA Specialty Produce Company, Hayward, California, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Maintaining the following unlawful rules in its LA & SF Specialty Employee Manual:

i. In the Confidentiality & Non-Disclosure rule:

Every employee is responsible for protecting any and all information that is used, acquired or added to regarding matters that are confidential and proprietary of [Respondent] including but not limited to client/vendor lists,

ii. In the Media Contact rule:

Employees approached for interview and/or comments by the news media, cannot provide them with any information. Our President, Michael Glick, is the only person authorized and designated to comment on Company policies or any event that may affect our organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful rules as set forth above.

(b) Furnish employees with inserts to its LA & SF Specialty Employee Manual regarding Confidentiality & Non-Disclosure and Media Contact rules that (1) advise that the unlawful rules have been rescinded, or (2) provide lawfully worded rules.

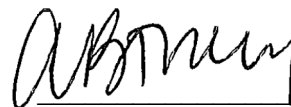
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<sup>8</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days after service by the Region, post at its Hayward, California facility, copies of the attached notice marked "Appendix."<sup>9</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 13, 2017.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 28, 2018



Amita Baman Tracy  
Administrative Law Judge

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<sup>9</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**APPENDIX**

**NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT maintain the following rules in its LA & SF Specialty Employee Manual, dated since at least April 13, 2017:

**In the Confidentiality & Non-Disclosure rule:**

Every employee is responsible for protecting any and all information that is used, acquired or added to regarding matters that are confidential and proprietary of [Respondent] including but not limited to client/vendor lists,

**In the Media Contact rule:**

Employees approached for interview and/or comments by the news media, cannot provide them with any information. Our President, Michael Glick, is the only person authorized and designated to comment on Company policies or any event that may affect our organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind/revise the unlawful rules listed above.

WE WILL furnish you with inserts for the LA & SF Specialty Employee Manual regarding the “Confidentiality & Non-Disclosure “and “Media Contact” rules, dated since at least April 13, 2017, that (1) advise that the unlawful rules have been rescinded, or (2) provide lawfully worded rules.

# LA SPECIALTY PRODUCE COMPANY

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

Oakland Federal Building  
1301 Clay Street, Room 300-N, Oakland, CA 94612  
(510) 637-3300, 8:30 a.m. to 5:00 PT

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/ 32-CA-207919](http://www.nlrb.gov/case/32-CA-207919) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER.